IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Contempt Petition NO. 257 OF 2006
in
A.O. No.391 of 2005

Smt. Leela Devnath Singh through
her son Shri Arjun Devnath Singh . ... Petitioners.
VS.

Shri Rupchand Harbansram & anr. . ... Respondents

Mr. Manish Virkhare for petitioner
Mr. Nadia Bhatra for respondent no.1.
Mr. A.J. Bhor for respondent no.2.

CORAM: D. G. KARNIK **J.**

DATE: 25th September 2006

P.C.:

1. Heard learned counsel for the petitioner and the respondents.

2. This contempt petition has been filed alleging that the respondent no.1 has committed breach of the order passed by this court on 15th June 2006.

3. The respondent no.1 is a tenant of the petitioner who is the

landlord. The respondent no.1 obtained the permission dated 13th March 2006 for carrying out tenantable repairs. The petitioner thereafter filed a suit and took out a motion for restraining the respondent no.1 from carrying out the repairs. Appeal no. 391 of 2005 was filed against he order passed in motion by the City Civil Court. At the hearing of the appeal the respondent no.1 gave an undertaking and assured to this court that the respondent no.1 would carry out tenantable repairs strictly in accordance with the permission dated 19.3.2004 except clause 9 thereof. Clause 9 relates to the construction of mezzanine floor.

4. This contempt petition has been filed alleging that the respondent carried out the construction in breach of the undertaking. There are vague allegations in para 6 of the contempt petition about the breach. The petitioner has alleged that the respondent no.1 was carrying out illegal construction contrary to the permission granted by the respondent no.2 as per letter dated 19th March 2004. No details of the alleged illegal construction are mentioned in para 6. In para 7 it is alleged that the respondent no.1 illegally constructed mezzanine floor and illegally raised the height of the tenanted premises. However, no particulars of the alleged construction have been made. No particulars of the alleged raising of the roof are also given. No prima facie material is produced before this court to show that the

respondent no. 1 has illegally carried out the construction of the mezzanine floor or has increased the height of the roof. No photograph has been produced. The petitioner has not taken any steps for appointment of a Court Commissioner in the trial court to show that the respondent no.1 carried out the construction in breach of the order. In the circumstances there is nothing to show that any breach has been committed by the respondent no.1. Hence contempt petition is dismissed. Liberty to the petitioner to move the trial court for appropriate relief.

(D. G. KARNIK J.)